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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,813	06/01/2001	Dennis W. Wahr	08386.0004	1270

22852 7590 01/12/2005

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EXAMINER


JACKSON, GARY

ART UNIT PAPER NUMBER

3731

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/870,813	Applicant(s) WAHR ET AL. 	
	Examiner Gary Jackson	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-20, 24, 25, 27-49, 51-55, 70-79, 81, 86-90 and 92-135 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 70-79, 81 and 86-90 is/are allowed.
- 6) ☒ Claim(s) 1-9, 13, 17-20, 24, 25, 35, 40, 42-55 and 92-135 is/are rejected.
- 7) ☒ Claim(s) 11-12, 14-16, 27-34 and 36-39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers


- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No: _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/27/2004</u> | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3731

DETAILED ACTION

This action is a response to applicants' amendment filed November 2, 2004. The amendment as filed overcomes the rejection of record. However, the indicated allowability of claims is withdrawn in view of the newly discovered reference(s) to Akerfeldt et al (US Patent 6,508,828) and Sideris (US Patent 5,284,488). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, line 7, the elongate member lacks antecedent bases.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5-7, 17-20, 24-25, 35, 40, 42-49, 51-55, 92, 93, 94, 99, 102-104, 106-107, 110-114, 116-117, 120-124, 127, 129-131 and 133-135 are rejected under 35 U.S.C. 102(b) as being anticipated by Sideris (US Patent 5,284,488). In regards to claim 1, the buttons 20

Art Unit: 3731

releasably connect the elongate member to the second anchor 14. Concerning claim 25 see figure 4.

Claims 1-2 and 100 are rejected under 35 U.S.C. 102(b) as being anticipated by Inoue (US Patent 5,171,259). Inoue discloses a first anchor 3' (furthest from the surgeon) and a second anchor 3'' (closest to the surgeon) ; a releasably fixation element 11 and elongate flexible element 4. See figure 9.

Claims 1, 5, 13, 18, 19, 20, 24, 35, 40, 52, 53, 54, 55, 92, 93, 94, 99, 102-103, 111, 112, 113, 122, 123, 134 and 135 rejected under 35 U.S.C. 102(e) as being anticipated by Akerfeldt et al (US Patent 6,508,828). Akerfeldt et al discloses a sealing device having a first anchor 2 and a second anchor 2 each having a passage. The second anchor having a releasable fixation mechanism 18 and an elongate member 12 releasably connected to the second anchor.

Concerning claim 20, elements 12 and 18 are considered the elongate member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 8, 9, 95-98, 101, 105, 105, 109, 115, 118, -119, 125-126, 128 and 132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sideris in view King et al (US Patent 3,874,388). The King et al reference teaches a sealing device having a plurality of arms extending from a hub. The arms are as shown in figure 8. Figure 7, suggest a plurality of uncovered arms. It would have been within the purview of one having ordinary skill in the art to

Art Unit: 3731

provide Sideris with a plurality of fingers that extend from a hub member. Further it would have been obvious to provide the arms in an "uncovered" fashion as taught by King et al.

Allowable Subject Matter

Claims 11-16, 27-34 and 36-39 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 70-79, 81 and 86-90 are allowable over the art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (571) 272-4697. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Antoine Nguyen can be reached on (571) 272-4693. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary Jackson
Primary Examiner
Art Unit 3731



gj
January 9, 2005